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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE)
TERMINATION OF PARENT-CHILD)
RELATIONSHIP OF N.R.L.S.,)

COREY LEONARD SNEED,)

Appellant-Plaintiff,)

vs.)

ST. JOSEPH COUNTY DEPARTMENT)
OF CHILD SERVICES,)

Appellee-Respondent.)

No. 71A03-0707-JV-346

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter Nemeth, Judge
The Honorable Barbara Johnston, Magistrate
Cause No. 71J01-0603-JT-18

October 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Corey Sneed appeals the trial court's involuntary termination of his parent-child relationship with N.R.L.S., his minor child. On appeal, Sneed raises two issues, which we consolidate and restate as whether sufficient evidence supports the trial court's conclusion that continuation of the parent-child relationship poses a threat to N.R.L.S.'s well-being. Because we conclude sufficient evidence supports the trial court's determination, we affirm.

Facts and Procedural History

Shortly after his birth on March 1, 2005, N.R.L.S. was diagnosed with fetal alcohol syndrome. Additional testing confirmed the existence of benzodiazepine in N.R.L.S.'s system. N.R.L.S.'s mother, Angina Sneed,¹ tested positive for benzodiazepine and PCP, and told members of the hospital staff that she was a heroin addict. Based on the test results and Angina's admitted heroin addiction, Child Protective Services placed N.R.L.S. in its custody at the hospital.² Upon his release from the hospital on March 7, 2005, N.R.L.S. was placed in a foster home, where he currently resides. On the same day, the St. Joseph County Department of Child Services ("DCS") filed a petition to adjudicate N.R.L.S. as a child in need of services ("CHINS"). On April 13, 2005, the CHINS court granted the petition. On May 25, 2005, the CHINS court entered an order adopting a case plan that recommended Sneed participate in parenting services, which included maintaining contact with DCS;

¹ Sneed and Angina were separated at the time of N.R.L.S.'s birth. Sneed has since filed a petition for dissolution of marriage.

² Sneed testified he either was at the hospital for N.R.L.S.'s birth or arrived shortly thereafter. However, upon receiving notice on March 2, 2005, that a detention hearing was being held to determine whether to place N.R.L.S. into protective custody, Sneed decided to return to his home in Muskegon, Michigan, and therefore did not attend the hearing.

visiting N.R.L.S. on a regular basis; and establishing stable employment, income, and housing. Until his arrest and incarceration in July 2005 on a charge of forgery, Sneed visited N.R.L.S. “four or five times,” even though the case plan recommended visitations for two-hour periods twice a week. Transcript at 79. On January 30, 2006, Sneed pled guilty to forgery, a Class C felony, and received a four-year sentence.

Although DCS initially recommended parental reunification as a permanent plan for N.R.L.S., in March 2006 it changed its recommendation to termination of parental rights as to both parents. Consistent with this recommendation, on April 18, 2006, DCS filed a petition to terminate Sneed’s parental rights. On April 13, 2007, the trial court conducted a trial on the termination petition. On April 23, 2007, the trial court entered findings of fact and conclusions of law, which included the following:

FINDINGS OF FACT

2. [N.R.L.S.] was detained from the hospital and placed in foster care. [N.R.L.S.] remains in the same foster home today. The foster parents desire to adopt [N.R.L.S.] These foster parents also care for and are seeking to adopt [N.R.L.S.’s] half sibling.

11. Mother’s parental rights were terminated at a hearing on May 24, 2006[,] where mother failed to appear, having received notice in accordance with I.C. 31-32-9.

CONCLUSIONS OF LAW

The Court concludes that in the instant case[,] [t]he child has been removed from the parent for at least six (6) months under a dispositional decree and that the child has been removed from the parent and under the supervision of the St. Joseph County Department of Child Services for at least fifteen (15) months of the most recent twenty-two (22) months.

The Court further concludes that the continuation of the parent-child relationship poses a threat to the well being of the child. This conclusion is based upon several factors.

Father did not cause the child to be born with drugs in his system. Mother was, however, a drug abuser and father had knowledge of the addiction. The Court certainly considers father's lack of responsibility in conceiving four (4) children with a woman who suffered from long-term drug addiction.

Corey L. Sneed currently is incarcerated with the Indiana Department of Correction. The St. Joseph County Department of Child Services provided records of Corey L. Sneed showing an extensive criminal history, dating back to 1992. The Court is entitled to consider this criminal history in evaluating father's character. The Court cannot predict the father's future; it has only the past upon which to rely.

Father has failed to financially support his child. He has also failed to maintain consistent contact with either the St. Joseph County Department of Child Services and/or the foster parents of [N.R.L.S.]

Corey L. Sneed desires that, until he is released from prison, his mother care for his children. It is the conclusion of this Court that Mr. Sneed's mother cannot adequately provide for [N.R.L.S.] due to her advancing age, medical condition, and overwhelming responsibilities caring for father's other children.

[N.R.L.S.] has resided in one (1) home all his life. Children need to feel safe and secure. [N.R.L.S.'s] foster parents have provided a consistent, safe haven where all his medical, emotional and physical needs are being met. These foster parents want to adopt [N.R.L.S.]; further evidence to the Court of their loving commitment to him. Additionally, the foster parents have encouraged and even arranged times when [N.R.L.S.] and his half-sibling can gather together with their other siblings. They acknowledge the importance of maintaining a connection with his family.

[N.R.L.S.] is at a tender age. He has never known his biological mother or father. His only memories are those of the environment where he has resided since coming home from the hospital. While Corey L. Sneed may pose no dangerous threat to [N.R.L.S.'s] physical safety, this Court believes that the continuation of the parent-child relationship between Mr. Sneed and [N.R.L.S.] represents a threat to [N.R.L.S.'s] future. The continuation of the parent-child relationship presents a threat to permanency for this child. It presents a threat to the continued emotional and physical health of this little boy. To continue the parent-child relationship would deny [N.R.L.S.'s] inherent right to stability, consistency, financial and emotional support and the certainty of care that this little one so justly deserves.

Appellant's Appendix at 10-11. Based on these findings and conclusions, the trial court terminated Sneed's parental rights. Sneed now appeals.

Discussion and Decision

I. Standard of Review

In reviewing the propriety of a trial court's decision to terminate parental rights, we neither reweigh evidence nor judge the credibility of witnesses. Bester v. Lake County Office of Family and Children, 839 N.E.2d 143, 147 (Ind. 2005). Instead, we consider the evidence most favorable to the judgment and the reasonable inferences that can be drawn from that evidence. In re J.W., 779 N.E.2d 954, 959 (Ind. Ct. App. 2002), trans. denied. When a trial court enters findings of fact and conclusions of law along with its judgment, we use a two-tiered review, first deciding if the evidence supports the findings and then deciding if the findings support the conclusions of law. Doe v. Daviess County Div. of Children & Family Servs., 669 N.E.2d 192, 194 (Ind. Ct. App. 1996), trans. denied. We will set aside a finding or judgment only if it is clearly erroneous. In re J.W., 779 N.E.2d at 959. "A finding is clearly erroneous when there are no facts or inferences drawn therefrom which support it." In re D.G., 702 N.E.2d 777, 780 (Ind. Ct. App. 1998). A judgment is clearly erroneous if the conclusions of law are not supported by the findings of fact or the conclusions of law do not support the judgment. In re S.P.H., 806 N.E.2d 874, 879 (Ind. Ct. App. 2004).

II. Propriety of Trial Court's Termination Decision

Because involuntary termination of parental rights is the most extreme sanction a court can impose, "termination is a last resort, available only when all other reasonable efforts have failed." In re T.F., 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), trans. denied. Trial courts do not terminate parental rights to punish a parent, but to protect a child. In re A.N.J., 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). A parent's constitutional right to raise his child may be terminated he is unwilling or unable to meet his parental responsibilities. In re

T.F., 743 N.E.2d at 773. Accordingly, courts may subordinate the parent's rights to those of the child if the relationship threatens a child's emotional or physical development. In re R.S., 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), trans. denied.

To involuntarily terminate Sneed's parental rights, DCS had to prove the following by clear and convincing evidence:

- (A) one (1) of the following exists:
 - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

 - (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). Sneed does not challenge the trial court's conclusions that termination is in N.R.L.S.'s best interests or that there is a satisfactory plan for the care and treatment of N.R.L.S. Instead, Sneed argues clear and convincing evidence does not support a reasonable probability that the conditions resulting in N.R.L.S.'s removal will not be remedied and that continuation of the parent-child relationship poses a threat to N.R.L.S.'s well-being. We address Sneed's latter argument only.³

³ We are skeptical the trial court concluded that the conditions resulting in N.R.L.S.'s removal will not be remedied because the trial court's findings of fact and conclusions of law do not state any such conclusion. Sneed included in his Appendix a purported order from the trial court that concludes "[t]here is a reasonable probability that the conditions resulting in the removal of the child from his parents' home will not be remedied," but the order is unsigned and appears as an attachment to an email addressed to Sneed's

Sneed argues there was insufficient evidence to support the trial court's conclusion that continuation of the parent-child relationship poses a threat to N.R.L.S.'s well being because "DCS presented no evidence that [Sneed] had ever abused, neglected or otherwise mistreated his children" and because "[t]here is no evidence that [Sneed] performed any act which posed a threat to the well being of [N.R.L.S.]" Appellant's Brief at 13. We agree with Sneed that there was no evidence he abused N.R.L.S. We also note the trial court seemed to acknowledge as much when it found that "Sneed may pose no dangerous threat to [N.R.L.S.'s] physical safety" Appellant's App. at 11. However, the trial court's conclusion that Sneed posed a threat to N.R.L.S.'s well being does not require a finding that Sneed abused N.R.L.S. See In re A.I., 825 N.E.2d 798, 811 (Ind. Ct. App. 2005), trans. denied (concluding the trial court properly concluded the parents posed a threat to the child's well being "[a]lthough there was no specific testimony that either parent had physically abused [the child]"); In re M.B., 666 N.E.2d 73, 78 (Ind. Ct. App. 1996), trans. denied (concluding the trial court properly concluded the father posed a threat to the child's well being based on findings that the father abused drugs, had prior criminal convictions, and had not provided adequate care for his other child); cf. In re L.V.N., 799 N.E.2d at 69 ("The trial court need not wait until the child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child

counsel. Appellant's App. at 7. Regardless, because we conclude sufficient evidence supports the trial court's conclusion that continuation of the parent-child relationship poses a threat to N.R.L.S.'s well being, we need not address Sneed's argument that there was insufficient evidence to support a conclusion that the conditions resulting in N.R.L.S.'s removal will not be remedied. See In re L.V.N., 799 N.E.2d 63, 69 (Ind. Ct. App. 2003) (noting that because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, "it requires the trial court to find only one of the two requirements of subparagraph (B) by clear and convincing evidence").

relationship.”). Thus, we decline Sneed’s invitation to find that the trial court’s conclusion was erroneous based solely on the absence of evidence of abuse.

Sneed’s second argument, there was no evidence he performed an act that posed a threat to N.R.L.S.’s well being, overlooks that the trial court based its conclusion on the following findings, each of which could be described as “acts” on Sneed’s part: 1) Sneed conceived four children with Angina knowing she had a drug addiction; 2) Sneed currently is incarcerated and has “an extensive criminal history”; and 3) Sneed has not supported N.R.L.S. financially and has not maintained consistent contact with DCS.⁴ Appellant’s App. at 11.

Applying the first part of our two-tiered standard of review, we note there was sufficient evidence to support these findings. Although Sneed denied he knew Angina was “drug addicted,” tr. at 74, and claimed he was “shocked” to learn she was abusing heroin, id. at 73, he testified he knew she had abused vicodin:

Q Okay. You were aware that your wife had difficulties with drugs prior to N.R.L.S.’s birth, weren’t you?

A Yeah. I mean (unintelligible) a drug, I said vicadin [sic], a prescription thing, but, I didn’t know it was as bad as it was.

Q Okay. But you were aware of that?

A I was aware.

Id. at 77. The record also indicates Sneed is currently incarcerated and has six felony and two misdemeanor convictions since 1992. Finally, the DCS caseworker testified that she did not receive documentation from Sneed indicating he had contributed financially to N.R.L.S.’s

⁴ The trial court also based its conclusion on findings that “Sneed’s mother cannot adequately provide for [N.R.L.S.] due to her advancing age, medical condition, and overwhelming responsibilities caring for [Sneed’s] other children” and that N.R.L.S.’s foster home provides him with stability. Id. at 11. Sneed,

care and that since May 2006, Sneed had not contacted her despite the fact she had sent him case conference letters, case plans, and notices of hearings. Thus, sufficient evidence supports the trial court's findings.

Nor are we convinced these findings are insufficient to support the trial court's conclusion. Indeed, this court has concluded the trial court's findings were sufficient to support a conclusion that continuation of the parent-child relationship poses a threat to the child's well being based on less extensive findings. See B.R.F. v. Allen County Dept. of Pub. Welfare, 570 N.E.2d 1350, 1352 (Ind. Ct. App. 1991) (affirming trial court's conclusion based on findings that the father was unable to provide adequate housing, had his driver's license suspended for life, had two prior convictions, and was presently incarcerated). Thus, because we conclude clear and convincing evidence supports the trial court's findings, and those findings in turn support the trial court's conclusion that continuation of the parent-child relationship poses a threat to N.R.L.S.'s well-being, it follows that the trial court's decision to involuntarily terminate Sneed's parental rights to N.R.L.S. was not clearly erroneous.

Conclusion

Sufficient evidence supports the trial court's conclusion that continuation of the parent-child relationship poses a threat to N.R.L.S.'s well-being. Accordingly, we conclude the trial court's decision to involuntarily terminate Sneed's parental rights to N.R.L.S. was not clearly erroneous.

however, does not challenge the sufficiency of these findings.

Affirmed.

KIRSCH, J., and BARNES, J., concur.